THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.26860 and 26892 of 2006

03.1.2007

Between:

Turuka Venkata Narayana Rao, S/o.Somaiah

... Petitioner

and

The Mandal Revenue Officer, Manubolu Mandal, Nellore District

... Respondent

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION Nos.26860 and 26892 of 2006

COMMON ORDER:

This common order shall dispose of both the matters. The petitioners are statedly Ex-servicemen. They were assigned agricultural land admeasuring Acs.5.00 each in survey No.521/C situated at Kolanukuduru village o f Manubolu Mandal in Nellore District. The assignment was made in 1996 for the purpose of agriculture. They approached the District Collector, Nellore, and obtained permission for cultivating/rearing fish and fish tanks. They statedly dug fish tanks for rearing fish. The Mandal Revenue Officer (MRO), issued a show cause notice bearing Rc.No.B.11/06, dated 16.3.2006 calling upon the petitioners separately to show cause as to why the assignment should not be cancelled on the ground that the petitioners allegedly failed to bring the land into cultivation. The petitioners submitted explanations. It appears that a similar notice was issued to M/s.Kanneganti Sea Foods (KSF). After considering the explanations, the respondent passed orders in Rc.No.B/11/06, dated 12.11.2006, ordering resumption of the land from the petitioners for alleged violation of provisions of A.P. Assigned Lands (Prohibition of Transfers) Act, 1977 (the Act, for brevity). In the impugned order, it is averred that the petitioners alienated the property in favour of KSF in contravention of the provisions of the Act. Aggrieved by the proceedings of the MRO dated 12.11.2006, these writ petitions are filed.

When the matter was listed on 27.12.2006, learned Government Pleader for Revenue (Assignment) sought time for getting instructions. Accordingly the matter was adjourned. Today, learned Government Pleader obtained instructions and also produced file from the office of the MRO.

Learned Counsel for the petitioners attacks the impugned order solely on the ground that the same is vitiated by lack of jurisdiction. In substantiation of his submission, he points out that when the show

cause notice was issued alleging that the petitioners failed to cultivate the land within the stipulated time as per terms of conditions of the assignment, the impugned order came to be issued on the ground that the petitioners allegedly contravened Section 3(2) of the Act and, therefore, the submission made that the impugned order virtually without any notice and alternatively the show cause notice which preceded the impugned order is ineffective and improper.

Learned Government Pleader for Revenue (Assignment) submits that the petitioners have alienated the property in contravention of the Act in favour of KSF. Secondly he submits that though the petitioners obtained permission from the District Collector for converting the assigned land into fish ponds, alienee of the petitioners has been using the ponds for prawn culture, which is prohibited under the terms of conditions of the assignment and the relevant law. He therefore sustains the impugned order.

A perusal of the impugned order would show that resumption of the land after due cancellation of assignment was proposed only on the ground that the petitioners failed to cultivate the land within the stipulated period in condition No.2 of D-Form patta. But, curiously, resumption is ordered on the ground that the petitioners alienated the land in favour of KSF. *Ex facie* the impugned order therefore suffers from an incurable defect and, therefore, it cannot be sustained. When the show cause notice was issued on one ground, the impugned order came to be passed on another ground. It only means that the impugned order was not preceded by a proper notice calling upon the petitioners to meet the allegation. When they were called upon to meet the allegation for non-cultivation, their assignment was cancelled on the allegation of alienation. Therefore, this Court holds that the impugned order is passed without jurisdiction.

In view of the above reasons, the impugned orders are set aside. The matter is remitted to the respondents but with a direction to issue proper show cause notice, obtain explanation from the petitioners afresh and pass appropriate orders. This exercise may be completed within a period of eight weeks from the date of receipt of a copy of this order.

The writ petitions, with the above observations, are accordingly disposed of. No costs.

_____

(**V.V.S.RAO, J**)

January 03, 2007.
YS